

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

ROBERT J. GILES,

Petitioner,

vs.

STATE OF IOWA; IOWA PUBLIC
EMPLOYMENT RELATIONS BOARD; JAMES
R. RIORDAN; M. SUE WARNER; and NEIL A.
BARRICK,

Respondents.

Case No. CV5366

RULING AND ORDER

FILED
POLK COUNTY, IA.
2004 DEC -6 AM 8:19
CLERK DISTRICT COURT

Respondents Iowa Public Employment Relations Board (PERB), Riordan, Warner and Barrick have moved to dismiss the petition for judicial review filed by Robert J. Giles. Hearing on the motion was held on November 29, 2004. Petitioner Giles appeared *pro se* and Respondents PERB, Riordan, Warner and Barrick appeared by their attorney, Jan V. Berry.

On September 20, 2004, Petitioner filed a timely petition for judicial review of two PERB decisions which dismissed two state employee grievance appeals he had filed pursuant to what was then Iowa Code section 19A.14(1). Giles hand-delivered a copy of the petition to PERB's offices on that date, but did not deliver or mail copies to any other persons or entities.

On October 13, 2004, Respondents PERB, Riordan, Warner and Barrick filed a motion to strike and dismiss, and on November 19 filed an amended and substituted motion to dismiss. Both were resisted by Giles. The amended and substituted motion, which was the subject of the hearing before the Court, seeks dismissal of the

petition due to Giles' failure to comply with the notice requirements of Iowa Code section 17A.19(2), which provides:

Within ten days after the filing of a petition for judicial review the petitioner shall serve by the means provided in the Iowa rules of civil procedure for the personal service of an original notice, or shall mail copies of the petition to all parties named in the petition and, if the petition involves review of agency action in a contested case, all parties of record in that case before the agency. Such personal service or mailing shall be jurisdictional. The delivery by personal service or mailing referred to in this subsection may be made upon the party's attorney of record in the proceeding before the agency. . . .

As noted in the statute, the prescribed notice procedures are jurisdictional. "Thus a failure to comply . . . deprives the district court of appellate jurisdiction over the case." *Brown v. John Deere Waterloo Tractor Works*, 423 N.W.2d 193, 194 (Iowa 1988).

The statute required Giles to mail the petition to or serve it (by the means provided in the Iowa Rules of Civil Procedure for the service of original notices) upon all parties named in the petition, and upon all parties of record in the contested cases before the agency. Giles was thus required to provide notice to the State of Iowa, PERB, Riordan, Warner and Barrick (the parties he named in his petition), and to the other party of record in the proceeding before PERB -- the State of Iowa.

Substantial, rather than literal, compliance with the statute is all that is necessary to invoke jurisdiction of the district court. *Brown, supra*, 423 N.W.2d at 194; *Monson v. Iowa Civil Rights Commission*, 467 N.W.2d 230, 232 (Iowa 1991). Although reluctant to dismiss the petition on grounds such as are urged here, the Court cannot conclude that Giles has substantially complied with the jurisdictional notice requirements of the statute.

Even were the Court to deem the delivery of a single copy of the petition to PERB's offices as sufficient to substantially comply with the requirement of notice to PERB members Riordan, Warner and Barrick individually, it is clear that Giles provided no notice of any kind to the State, either by mail or by personal service in accordance with the rules of civil procedure. Notice to the State was required, even if the proceedings before the PERB had not been contested cases, because it is a party Giles named in his petition. As to the State, there has been no compliance with the statute's requirements whatsoever.

Compelled by statute and case precedent to conclude that it lacks jurisdiction, the Court must grant the amended and substituted motion.

The motion to dismiss is granted. The petition in this cause is dismissed, with costs taxed to the Petitioner.

SO ORDERED this 3rd day of December, 2004.


CARLA T. SCHEMMEL, JUDGE
Fifth Judicial District of Iowa

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